IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17210 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? - **Yes.**

2 To be referred to the Reporter or not ? - **Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? - **No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? - **No.**

5 Whether it is to be circulated to the civil judge ? - **No.**

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CHANASMA TALUKA SAHAKARI KHARID VECHAN SANGH LTD - Petitioner(s)

Versus

STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR HARIN P RAVAL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.
MR BS PATEL for Respondent(s) : 5,
MRS RANJAN B PATEL for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 22/08/2005

ORAL JUDGMENT

Rule. Learned AGP waives rule on behalf of Respondent nos. 1 to 4. Mr.B.S.Patel, learned Advocate

waives Rule on behalf of Respondent no.5.

1. Chanasma Taluka Sahakari Kharid Vechan Sangh Ltd., petitioner has filed this petition under Article 226 and 227 of the Constitution of India for writ of certiorari and/or any other appropriate writ, order or direction in the nature of certiorari, quashing and setting aside the impugned order dated 16/6/2005, passed by the Additional Registrar (Appeals), Cooperative Societies, State of Gujarat in Appeal/Application No.60 of 2005.

2. Heard Mr.Harin Raval, learned advocate for the petitioner and Mr.B.S.Patel, learned advocate on behalf of respondent no.5 and Mr.M.A.Patel, learned AGP for respondent nos.1 to 4.

3. The facts giving rise are as under:

3.1 The petitioner is a registered cooperative society duly registered under the provisions of the Gujarat Cooperative Societies Act, 1961.

3.2 It is the case of the petitioner that petitioner society incurred loss during the years 1999-2000 and

2000-2001. Therefore, petitioner society was ordered to be taken in liquidation under Section 107 of the Cooperative Societies Act which provides winding up of the cooperative society.

3.3 After some time passed, position of the petitioner society improved and therefore, petitioner society has made an application on 31/3/2005 for reconstruction of the petitioner society, to the District Registrar, Cooperative Societies. The Cooperation Officer (Liquidation) of the office of the District Registrar issued an agenda on 21/4/2005 for the purpose of holding a special general meeting. Thereafter, on 30/4/2005, meeting of the petitioner society has held wherein it was decided to reconstruct the petitioner society.

3.4 The District Registrar issued a notice on 3/5/2005 calling for suggestions and objections, if any against the propose reconstruction of the petitioner society.

3.5 It is the case of the petitioner that pursuant to the said notice, nobody objected to the revival of the society.

3.6 The District Registrar thereafter, after going through the proposal of 3/5/2005 for revival of the society, the resolution of the society dated 30/4/2004 and also Section 19 of the Act which provides reconstruction of the society was pleased to pass an order on 16/5/2005 about reconstruction of the society. The authority observed that all members have trust in the new management of society. The Government has also desire to open such society at Taluka level and if the said society is opened, that will benefit the agriculturists of Taluka and all members of the society regarding carrying on business of fertilizers, other medicines, pesticides in this behalf and even the past debt can also be repaid in this behalf. All members have shown their interest in opening of such a society. The order of reconstruction passed is at page 62 of the paper book. Pursuant to that, the Deputy Agriculture Director has issued a license in favour of the society on 1/6/2005. The Deputy Agriculture Director has also registered the society from 1/6/2005 to 31/5/2008 to carry on business in fertilizers and pesticides. The said orders are produced by the petitioner in this behalf. The Deputy Agriculture Director also passed further order by registering the society for business in wholesale which is at page 69. The meeting of the

said society also held on 26/5/2005 and the minutes of the said meeting has been also put on record at page 71 of the petition.

4.It appears that one Ganget Seva Sahakari Mandali Ltd., Mu.:Ganget, Ta.:Chanasma, Patan, respondent no.5 in petition, filed an appeal before Additional Registrar (Appeals) challenging the order of reconstruction of the petitioner society dated 16/5/2005 passed by the District Registrar, Cooperative Societies. The Additional Registrar (Appeals) passed an order on 31/5/2005 issuing notice and kept hearing on 8/6/2005. In the said application, respondent no.5 only joined District Registrar and did not join petitioner as a party.

4.1 In the appeal proceeding, being Appeal No.60 of 2005, one Mr.Pravinbhai M.Patel, the applicant/petitioner has filed application on 8/6/2005 to join him as a party to the appeal and also pass any other order in this behalf. Said Application is at page 79 of the petition.

4.2 The Additional Registrar (Appeals), Gandhinagar was pleased to pass order on 16/6/2005. In the said

proceeding, it was contended that against the order of the Registrar dated 16/5/2005, the respondent no.5 filed appeal, when the order of the District Registrar has been challenged by the respondent no.5, therefore, petitioner society is a necessary and proper party in this behalf and they should be joined as a party. The appellate authority passed an order that as it is not deciding appeal but an interim order, the application for joining petitioner as a party is not necessary to be allowed at this stage and once again remanded the matter to the District Registrar. The appellate authority also cancelled the order dated 16/5/2005 granting registration to the petitioner society (viz. without hearing the petitioner).

5. Mr.Harin Raval, learned advocate for the petitioner stated that aforesaid order of the Additional Registrar (Appeals) is nullity in eye of law because they have already filed application for joining party. The said application has not been decided on one hand and on the other hand, it is ordered for cancellation of order of reconstruction. So in eye of law, the authority has passed the order without hearing the petitioner for reconstructing the society. The said order is illegal, without jurisdiction and nullity in the eye of the law

and liable to be set aside as now it is well settled by a catena of the decision of the Hon'ble Apex Court and the Hon'ble High Court that if you want to pass any order, then pass the order after hearing the parties. The basic principle of Rules of Natural Justice has been ignored by the Additional Registrar (Appeals) and thereafter he remanded the order.

6. It may be noted that a Revision Application has also been filed by the petitioner society somewhere in June, 2005. The Revisional Authority, Joint Secretary, Agriculture and Cooperative Department rejected the said application of the petitioner. It is observed therein that when the Additional Registrar has passed an order, he has passed the order after going through the records and District Registrar has to pass the order after going through the merits of the matter. As it is interim order, there is no question of granting any injunction order in this behalf. The Revisional Authority also did not address upon the basic question as to when the petitioner's application has not been considered and still the authority has set aside the order, so the question is whether order of the authority is following rules of natural justice or not and whether the authority passed order without hearing

the other side has not been at all considered by the Revisional Authority. The authority has passed a cryptic order without application of mind and therefore, Mr.Raval, learned advocate states that that order also must be quashed and set aside.

7. Mr.B.S.Patel, learned advocate for the respondent has tried to support the order and submitted that this Court may not interfere with the said order in exercise of power under Article 226 and 227 of the Constitution of India.

8. Mr.B.S.Patel, learned advocate for the respondent also relied upon the affidavit in reply of respondent no.5 dated 12/8/2005. It was only stated that the competent authority can refuse the stay, but for that reasons are required to be assigned and in the present case, impugned order, reasons have already been assigned and therefore petition is not entertained in this behalf. As regards order passed by the Additional Registrar (Appeals), Cooperative Society, it has been stated that after hearing all the parties concerned including the petitioner, it was the order of remand and cannot be said to be a judicial order which cannot be taken into revision and the said order cannot be a subject matter

of challenge as per the law settled by the Hon'ble Court in the case reported in 1997 (2) GCD 314 (Nadiad Taluka Kharid Vechan Sangh Limited vs. State of Gujarat and others) and therefore this Court may not interfere at this stage. Admittedly as the petitioner society has not started functioning and therefore, the authority could not pass an order of review. Further the authority has not been stated as to whether the petitioner was heard or not before the order of the cancellation of the registration or not.

9. This Court is very sorry to observe that the authority being quasi judicial authority to whom power has been vested ignores the basic principles of law viz. Rules of Natural Justice and decisions rendered by the Hon'ble Supreme Court and the Hon'ble High Court. The authorities ought not to have passed order without joining them as a party and without hearing the party. A basic principles and rules of natural justice has been violated.

10. Mr.Raval, learned advocate has relied upon several judgments in this behalf to show that if principle of natural justice are violated, the order become nullity and do not existing in the eye of law.

11.I have considered the facts and circumstances from the facts, which I have stated above. Initially respondent no.5 has filed application for quashing and setting aside the order of Society reconstructing. He did not make petitioner as a party. When petitioner filed an application for joining in the said proceedings, the Additional Registrar (Appeals) did not decide application, however, cancel the order dated 16/5/2005 granting registration to the petitioner obviously without hearing the petition. If the revisional authority has confirmed the order and remanded the matter without applying mind as to whether there is a violation of rules of natural justice or not.

11.1 Now it is well settled that if rules of natural justice are violated, the order become nullity in the eye of law. An order is null and void if the statute clothing the administrative tribunal with power conditions it with the obligation to hear expressly or by implication. (Read - Judgment of the Hon'ble Apex Court in the case of Nawabkhan vs. the State of Gujarat, reported in AIR 1974 SC 1471, particularly para 20 at page 1480.)

11.2 In a given case when the principle of natural justice are stated to have been violated it is open to the Appellate Authority in appropriate cases to set aside the order and require the assessing officer to decide the case de novo. (Re. – Judgment of the Hon'ble Supreme Court in the case of Commissioner of Sales Tax and others vs. Subhash & Co., reported in (2003) 3 SCC 454, particularly para 22 (iv) at page 464).

11.3 “Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held.” Re - Judgment of the Hon'ble Supreme Court in the case of Canara Bank vs. Debasis Das, reported in AIR 2003 2041, particularly para 19.

11.4 “Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.” - Re - Judgment of the Hon'ble Supreme Court in the case of Canara Bank vs. Debasis Das, reported in AIR 2003 2041, particularly para 21.

11.5 I have considered the Judgment of the High Court in the case of Kanubhai C. Patel vs. Anandiben Patel, reported in 2004 (3) GLH 113, where this Court has considered various principle of natural justice from various authorities. Please see paras 6.1(a), 6.1(b), 6.1(c), 6.2, 6.3, 6.4, 6.5, 6.7, 6.8, 6.9, 6.10.

12.It may be noted that Prof.C.K.Thakkar, now the Judge of the Hon'ble Supreme Court of India in his book “Law of Writs”, 5th Edition, page 271, observed that “So far as India is concerned, it is fairy well settled and courts have consistently taken the view that whenever there is violation of any rule of natural justice, the order is null and void.” and on page 272 also, observed that “One thing, however, must be noted. Even if the

order passed by an authority or officer is ultra vires, against the principles of natural justice and therefore, null and void, it remains operative unless and until it is declared to be so by a competent court. Consequent upon such declaration, it automatically collapses and it need not be quashed and set aside."

13.It may be noted that Dr.I.P.Missy, in his book "Administrative Law ", 6th Edition, page 182, observed that "The principle of audi alteram partem is the basic concept of the principle of natural justice. The omnipotency inherent in the doctrine is that no one should be condemned unheard. In the field of administrative action, this principle has been applied to ensure fair play and justice to affected persons."

14.It may be noted that Dr.S.P.Sathe, in his book "Administrative Law ", 7th Edition, page 248, observed that "An administrative action, which is taken in violation of the rules of natural justice, such as fair hearing, is an action without jurisdiction. It is an ultra vires act and therefore, has to be nullity. The rules of natural justice are open-textured, and they are bound to acquire new dimensions as well as new meanings as vistas of the due process of law and human

rights widen.”

15.I have also considered Hon'ble Supreme Court judgment in the case of Ravi S.Naik vs. Union of India and others, reported in 1994 Supp.(2) SCC 641, particularly para 20 at page 653, “Principles of natural justice have an important place in modern Administrative Law. They have been defined to mean “fair play in action”. (See:Maneeka Gandhi v. Union of India, Bhagwati, J.) As laid down by this Court: “They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or contrary but is shared in common by all men” (Union of India v. Tulsiram Patel). An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error”.

16.I have considered the facts and circumstances of the case. In this case, admittedly the District Registrar has passed an order on 16/5/2005 about the reconstruction of the authority and society started functioning in this behalf. The said action of

reconstruction was challenged by one Ganget Seva Sahakari Mandali Ltd., respondent no.5 herein by filing appeal before the District Registrar (Appeals). In the said proceedings, an Additional Registrar (Appeals) issued notice. However, it may be noted that the said appeal filed by respondent no.5, only District Registrar was joined as a respondent and petitioner society was not joined as a party. When the applicant/petitioner filed an application on 8/6/2005 to join him as a party in appeal and also passed an order in this behalf, the Additional Registrar (Appeals) did not decide the application of the petitioner to join as a party, remanded the matter to the District Registrar and cancell the order dated 16/5/2005, granting the registration to the petitioner society. Thus, the obvious fact is that the authority cancell the order or registration of petitioner society without hearing in this behalf because the authority did not decide the application for joining him as a party so the proceedings by the appellate authority by which it cancell the registration, the society was admittedly not heard. Authority has rejected the Revision Application without assigning any reasons. Revisional Authority stated that the District Registrar has to hear the matter and pass the order and

therefore, after going through the same, remanded the matter to the District Registrar. The District Registrar also did not address as far as the question as to whether the petitioner should be a party before the proceedings or not. Therefore, question that whether the petitioner should be necessary party before the order is quashed, has not been considered by the revisional authority.

17.I have gone through the contentions of both the learned advocates for the petitioner and respondent in this behalf. Mr.Patel's contention that authority has only rejected the stay and only remanded the matter, this Court may not interfere under Articles 226 and 227 of the Constitution of India. However, unfortunately, in this case initially when the respondent no.5 has filed an application challenging the order of District Registrar, the authority has passed interim relief on 31/5/2005 staying the order but authority did not address itself as to whether the petitioner society is party before it or not. It was their duty to point out parties and make society as a party before passing any adverse order against the petitioner society.

17.1 In my view, the District Registrar failed and

neglect in his duty before passing ex parte interim order as he passed the order without joining the petitioner as a party respondent and without hearing him. Still worst when the application filed for joining party, 3.1/2 pages order has been passed without deciding that application of the petitioner for impleading it to be joined as party respondent, straight way allowed the appeal of the private respondent no.5 and set aside the order of the reconstruction of the petitioner dated 16/5/2005 passed by the District Registrar, Cooperative Societies.

18. It is settled law that “Audi alteram paterm The Audi alteram partem rule ensures that no one is condemned unheard. It is the first principle of civilized jurisprudence that a person against whom any action is sought to be taken or whose right or interest is being affected, be given a reasonable opportunity to defend himself. Hearing means a fair hearing. This involves components, such as: (1) Notice; (2) an opportunity to the concerned party to present his case; and (3) legal representation. Re – Halsbury's Laws of India, para 005.054 at page 119-120. It is also settled that a quasi judicial order made without following natural justice is void and null. The non observation of

natural justice is itself a prejudiced to any individual and proof of prejudice, independent of proof of denial of natural justice, is not necessary. In cases of absence of notice or absence of hearing, the order passed is invalid or a nullity. I have also referred to the judgment in the case of Navi Bhagat vs. the State of Bihar, reported in 1990 (2) SCC 48.

19.As regards principles of natural justice is concerned, once the authority passed an order without giving an opportunity of being heard to the concerned person, then order is become nullity in eye of law. In this behalf I have considered various judgments of the Hon'ble Supreme Court 1) in the Case of Nawabkhan v. the State of Gujarat, reported in AIR 1974 SC 1471, 2) in the case of Commissioner of Sales Tax and others v. Subhash & Co. reported in (2003) 3 SCC 454, and 3) in the case of Canara Bank v. Debasis Das, reported in 2003 AIR 2041 and also judgment of this Court in the case of Kanubhai v. Anandiben Patel, reported in 2004 (3) GLH 113 and also various books namely “Writ of Law” of Justice C.K.Thakkar and “Administrative Law” of Dr.S.P.Sathe and also another judgment of Hon'ble Supreme Court in the case of Ravi S.Naik v. Union of India and others, reported in 1994 Supp.(2) SCC 641.

In view of these the authorities, it is crystal clear that when the authority pass an order particularly when registration is already there and cancell the same if the said order is passed without given an opportunity of being heard, the order as if does not existing and therefore the petition is allowed. In view of the same, the order dated 16/6/2005 passed by the Additional Registrar (Appeals) by which he has cancelled the order of the District Registrar dated 16/5/2005 of registering the petitioner society without hearing the petitioner is quashed and set aside as well as the order passed by the Special Secretary, Agriculture and Cooperative Department dated 5/8/2005 also quashed and set aside because the authority has not considered the principle of natural justice in this behalf. This Court hopes and trusts that in subsequent proceedings, authority consider this principles before passing any order and they will atleast give an opportunity of being heard to the concerned petitioner in this behalf. In view of the same, no order as to costs.

Petition is allowed with no order as to costs. Rule is made absolute to this extent.

(K.M.MEHTA, J.)

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